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San Diego, CA 92121  
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License No. 750542A/B

September 9, 2016

Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816  
Attn: Jill Y. Sewell

Re: Rebuttal to Non-Responsive Determination of Apparent Low Bidder  
Caltrans Contract 11-237964

Dear Mrs. Sewell:

Hazard Construction ("Hazard") is in receipt of your letter dated September 8, 2016 finding Hazard non-responsive because of an inconsistency found in both the Subcontractor List Form and the Disadvantaged Business Enterprise (DBE) Commitment Form. Please accept this letter as our written response to this non-responsive finding and our written request to extend of our bid until close of business on Monday, October 24, 2016.

As described in our Subcontractor List Form, by the lack of listing any other subcontractor for Bid Item 25 – Roadway excavation (Type Z-2) (Aerially Deposited Lead), Hazard intends to self-perform the excavation and loading of excess material generated while performing bid item 25 with its own forces. In accordance with Public Contract Code Section 4106, if a prime contractor fails to specify a subcontractor ... the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. The use of other service/supply companies to perform Environmental Stewardship and Trucking, which are not defined as "subcontractors" in Public Contract Code Section 4113, does not invalidate Section 4106 of the Public Contract Code and reinforces the fact that Hazard's bid is responsive.

Caltrans is correct that Hazard listed J. Torres Company for the Trucking Haul Off and Disposal of Type Z-2 Aerially Deposited Lead material on the DBE Commitment Form. J. Torres Company is a second tier supplier of hazardous waste transporters to Summit Environmental Contractors ("Summit"). In accordance with the Special Provisions, Section 14 – Environmental Stewardship (a copy of which is attached), Summit is providing Hazard with hazardous waste management services which includes a lead compliance plan, excavation and transportation plan, proper waste profiling for hazardous waste manifest disposal paperwork and disposal coordination utilizing currently registered hazardous waste transporters to dispose of Type Z-2 material at a Class I landfill in California. Attached is Summit's bid day quotation for hazardous waste management services and trucking/disposal services noting the use of J. Torres for the hazardous waste transport. Please note that the \* represent that Summit has only provided pricing for transportation and disposal services and not the excavation of the material from the jobsite.

Being that neither Summit nor J. Torres Company will be providing any type of physical contracting services on the construction site and that the service of hazardous waste management and the supply of hazardous waste transporters do not fall under the required criteria for subcontractor listing per Section 2-1.10 of the Revised 2010 Standard Specifications or Public Contract Code Section 4100, we ask that Caltrans reverse its decision to find Hazard responsive to all aspects.

Caltrans, nor any other public agency, has interpreted that Public Contract Code Section 4100 requires the listing of hazardous waste services or trucking companies in the past. To further support the inconsistency of this non-responsive decision, please reference Contract 11-409704 that bid on July 7, 2016 and was successfully awarded to Hazard on July 29, 2016. Hazard used the same exact combination and listed J. Torres as a second tier supplier on the DBE commitment form and did not list a

subcontractor as we intend to self-perform that bid item. Please review and remedy this inconsistency between contracts.

I hope that this letter helps to clarify this misunderstanding. If Caltrans does not agree with our position, I request that a panel of Caltrans peers be assembled and we can present our case in person. If you have any questions regarding any of these matters or need further clarification, please do not hesitate to call me at the main office. Thank you for your attention to this matter.

Sincerely,  
HAZARD CONSTRUCTION COMPANY

  
Jason A. Mordhorst  
President

Attachments  
cc: Bid File

2. The gravel-filled bags are:
  - A. Beyond 30 feet from the edge of traveled way for freeways and expressways, or
  - B. Beyond 20 feet from the edge of traveled way for conventional highways.
3. The gravel-filled bags on the shoulder are within a temporary lane closure and the bags are removed prior to the lane closure being removed.

AA

## 14 ENVIRONMENTAL STEWARDSHIP

Replace section 14-11.03 with:

### 14-11.03 MATERIAL CONTAINING HAZARDOUS WASTE CONCENTRATIONS OF AERIALLY DEPOSITED LEAD

#### 14-11.03A General

##### 14-11.03A(1) Summary

Section 14-11.03 includes specifications for hazardous waste management while excavating, stockpiling, transporting, placing, and disposing of material containing hazardous waste concentrations of aerially deposited lead (ADL).

ADL is present within the project limits.

The Department has received from the DTSC a variance regarding the use of material containing ADL. The variance applies if Type Y-1 or Y-2 material are shown.

##### 14-11.03A(2) Definitions

**Type Y-1:** Material that contains ADL in average concentrations (using the 90 percent Upper Confidence Limit) of 1.5 mg/L or less extractable lead (based on a modified waste extraction test using deionized water as the extractant) and 1,411 mg/kg or less total lead. This material is a California hazardous waste that may be reused as permitted under the variance of the DTSC provided that the lead contaminated soil is placed a minimum of 5 feet above the maximum historic water table elevation and covered with at least 1 foot of non-hazardous soil.

**Type Y-2:** Material that contains ADL in average concentrations (using the 90 percent Upper Confidence Limit) that exceed either 1.5 mg/L extractable lead (based on a modified waste extraction test using deionized water as the extractant) or 1,411 mg/kg total lead but are less than 150 mg/L extractable lead (based on a modified waste extraction test using deionized water as the extractant) and less than 3,397 mg/kg of total lead. This material is a California hazardous waste that may be reused as permitted under the variance of DTSC provided that the lead contaminated soil is placed a minimum of 5 feet above the maximum historic water table elevation and protected from infiltration by a pavement structure which will be maintained by the Department.

**Type Z-2:** Material that contains ADL in average concentrations (using the 95 percent Upper Confidence Limit) greater than or equal to 1,000 mg/kg total lead, greater than or equal to 5.0 mg/L soluble lead (as tested using the California Waste Extraction Test), and the material is surplus; or material that contains ADL in average concentrations greater than 150 mg/L extractable lead (based on a modified waste extraction test using deionized water as the extractant) or greater than 3,397 mg/kg total lead. This material is a Department-generated California hazardous waste and must be transported to and disposed of at a California Class I disposal site.

**Type Z-3:** Material that contains ADL in average concentrations (using the 95 percent Upper Confidence Limit) greater than 5.0 mg/L soluble lead, (as tested using the Toxicity Characteristic Leaching Procedure). This material is a Department-generated federal hazardous waste and must be transported to and disposed of at a California Class I disposal site.

##### 14-11.03A(3) Site Conditions

ADL concentration data and sample locations maps are included in the *Information Handout*.

Type Z-2 material exists at the 3 MVP locations, the concrete barrier location, and the sign installation area located between College Avenue and Lake Murray Boulevard as shown.

**14-11.03A(4) Submittals****14-11.03A(4)(a) Lead Compliance Plan**

Submit a lead compliance plan under section 7-1.02K(6)(j)(ii).

Include perimeter air monitoring incorporating upwind and downwind locations as shown or as authorized. Monitor with personal air samplers using National Institute of Safety and Health Method 7082. Sampling must achieve a detection limit of  $0.05 \mu\text{g}/\text{m}^3$  of air per day. Conduct daily monitoring while clearing and grubbing and performing earthwork operations. Analyze a single representative daily sample for lead. Analyze the sample and provide results to the Engineer within 24 hours. Analyses must be performed by a laboratory accredited by the Environmental Lead Laboratory-Accreditation Program of the American Industrial Hygiene Association. Average lead concentrations must not exceed  $1.5 \mu\text{g}/\text{m}^3$  of air per day and  $0.15 \mu\text{g}/\text{m}^3$  per day on a rolling 90-day basis. Calculate average daily concentrations based on monitoring to date, and projection based on those monitoring trends for the next 90 days or to the end of work subject to the lead compliance plan if less than the specified averaging period. If concentrations exceed these levels stop work and modify the work to prevent release of lead. Monitor under the direction of a CIH. The air monitoring data must be reviewed by and signed by the CIH.

**14-11.03A(4)(b) Excavation and Transportation Plan**

Within 15 days after approval of the Contract, submit 3 copies of an excavation and transportation plan. Allow 7 days for review. If revisions are required, as determined by the Engineer, submit the revised plan within 7 days of receipt of the Engineer's comments. For the revision, allow 7 days for the review. Minor changes to or clarifications of the initial submittal may be made and attached as amendments to the excavation and transportation plan. In order to allow construction to proceed, the Engineer may conditionally approve the plan while minor revisions or amendments are being completed.

Prepare the written, project specific excavation and transportation plan establishing the procedures you will use to comply with requirements for excavating, stockpiling, transporting, and placing or disposing of material containing ADL. The plan must comply with the regulations of the DTSC and Cal/OSHA and the requirements of the variance. The sampling and analysis portions of the excavation and transportation plan must meet the requirements for the design and development of the sampling plan, statistical analysis, and reporting of test results contained in US EPA, SW 846, "Test Methods for Evaluating Solid Waste," Volume II: Field Manual Physical/Chemical, Chapter Nine, Section 9.1. The plan must include the following elements:

1. Excavation schedule by location and date
2. Temporary locations of stockpiled material
3. Dust control measures
4. Air monitoring. Include the following information:
  - 4.1. Location and type of equipment
  - 4.2. Sampling frequency
  - 4.3. Name and address of the accredited laboratory where the analysis was performed
5. Transportation equipment and routes
6. Method for preventing spills and tracking material onto public roads
7. Truck waiting and staging areas
8. Site for disposal of hazardous waste
9. Spill Contingency Plan for material containing ADL

**14-11.03A(4)(c) Burial Location Report**

Not Used

**14-11.03A(4)(d) Bill of Lading**

Not Used

**14-11.03A(5) Quality Control and Assurance**

Excavation, reuse, and disposal of material with ADL must comply with rules and regulations of the following agencies:

1. US DOT
2. US EPA
3. California Environmental Protection Agency
4. CDPH
5. DTSC
6. Cal/OSHA
7. California Department of Resources Recycling and Recovery
8. RWQCB, Region 9, San Diego
9. California Air Resources Board
10. San Diego Air Pollution Control District

Transport and dispose of material containing hazardous levels of lead under federal and state laws and regulations and county and municipal ordinances and regulations. Laws and regulations that govern this work include:

1. Health & Safety Code, Division 20, Chp 6.5 (California Hazardous Waste Control Act)
2. 22 CA Code of Regs, Div. 4.5 (Environmental Health Standards for the Management of Hazardous Waste)
3. 8 CA Code of Regs

#### **14-11.03B Materials**

Not Used

#### **14-11.03C Construction**

##### **14-11.03C(1) General**

Not Used

##### **14-11.03C(2) Material Management**

Transport excavated Type Z-2 material using:

1. Hazardous waste manifest
2. Hazardous waste transporter with a current DTSC registration certificate and CA Highway Patrol (CHP) Biennial Inspection of Terminals (BIT) Program compliance documentation.

##### **14-11.03C(3) Dust Control**

Excavation, transportation, placement, and handling of material containing ADL must result in no visible dust migration. A water truck or tank must be on the job site at all times while clearing and grubbing or performing earthwork operations in work areas containing ADL. Apply water to prevent visible dust.

##### **14-11.03C(4) Surveying Type Y-1 or Y-2 Material Burial Locations**

Not Used

##### **14-11.03C(5) Material Transportation**

Before traveling on public roads, remove loose and extraneous material from surfaces outside the cargo areas of the transporting vehicles and cover the cargo with tarpaulins or other cover, as outlined in the approved excavation and transportation plan. You are responsible for costs due to spillage of material containing lead during transport. Transportation routes for Type Y-1 or Y-2 material must only include the highway.

##### **14-11.03C(6) Disposal**

Analyze surplus material for which the lead content is not known for lead before removing the material from within the project limits. Submit a sampling and analysis plan and the name of the analytical laboratory at least 15 days before beginning sampling and analysis. Use a SWRCB ELAP-certified laboratory. Sample at a minimum rate of 1 sample for each 200 cu yd of surplus material and test for lead using US EPA Method 6010B or 7000 series.

##### **14-11.03D Payment**

Payment for a lead compliance plan is not included in the payment for environmental stewardship work.

The Department does not pay for stockpiling of material containing ADL, unless the stockpiling is ordered. The Department does not pay for sampling and analysis unless it is ordered. The Department does not pay for additional sampling and analysis required by the receiving landfill.

Sampling, analyses, and reporting of results for surplus material not previously sampled is change order work.

**Replace section 14-11.04 with:**

**14-11.04 MINIMAL DISTURBANCE OF MATERIAL CONTAINING HAZARDOUS WASTE CONCENTRATIONS OF AERIALLY DEPOSITED LEAD**

**14-11.04A General**

**14-11.04A(1) Summary**

Section 14-11.04 includes specifications for minimal disturbance of material containing hazardous waste concentrations of Aerially Deposited Lead (ADL).

Compliance with 22 CA Code of Regs is not required where there is minimal disturbance of hazardous waste concentrations of ADL.

**14-11.04A(2) Project Conditions**

Hazardous waste concentrations of ADL are typically found within the top 2 feet of material in unpaved areas of the highway.

Levels found in the area of minimal disturbance range from non-detect to 2430 mg/kg total lead with an average concentration of 671.5 mg/kg total lead (using the 90 percent Upper Confidence Limit), as analyzed by US EPA Method 6010 or US EPA Method 7000 series.

Minimal disturbance of hazardous waste concentrations of ADL will occur from post mile 5.4 to post mile 10.6 when trenching in unpaved areas and for guardrail replacement.

**14-11.04A(3) Quality Control and Assurance**

Handling material containing aerially deposited lead must comply with rules and regulations of the following agencies:

1. Cal/OSHA
2. RWQCB, Region 9—San Diego

**14-11.04A(4) Lead Compliance Plan**

Submit a lead compliance plan under section 7-1.02K(6)(j)(II).

**14-11.04B Materials**

Not Used

**14-11.04C Construction**

**14-11.04C(1) General**

Not Used

**14-11.04C(2) Soil Handling**

Handling of material containing ADL must result in no visible dust migration. Use dust control measures. A means of controlling dust must be available at all times when handling material in work areas containing ADL at hazardous waste concentrations.

Separate material from vegetation. The resulting soil must remain on the job site.

Surplus material from the areas containing hazardous waste concentrations of ADL must remain in the area of disturbance. Do not dispose of surplus material outside the highway.

**14-11.04D Payment**

Payment for a lead compliance plan is not included in the payment for environmental stewardship work.



# SUMMIT

ENVIRONMENTAL CONTRACTORS

SENT VIA EMAIL

## ITEM BID COST

August 22, 2016

Summit Environmental Contractors  
 Environmental Infrastructure Division  
 CSLB License # 929061 Class A, C-21, C-57, HAZ  
 Certified Small Business No. 61973  
 DIR Registration #1000024682

PROJECT: Caltrans Contract No. 11-237964  
 TO: Hazard Construction  
 ATTN: Jeff Richardson

Summit Environmental Contractors is providing this pricing proposal to furnish supervision, labor, materials and equipment in accordance with the scope of work, plans, specifications, terms and condition provided at the time of proposal for the subject project, and as defined below:

Summit will be utilizing a second tier DBE Subcontractor for the amount of \$20,000.

Bid #	Item Code	Bid Item	Unit	Price
1	070030	Lead Compliance Plan	LS	\$1,500.00
25	190105	Roadway Excavation (Z-2)* (Aerially Deposited Lead)	TON	\$107.00

\* Price includes transportation and disposal only.

NON CONTRACT ITEMS

Excavation and Transportation Plan	Plan	\$1,500.00
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All work shall be performed in accordance with all Federal, State, and Local regulations in effect at the time of this proposal.

Submitted by: Cathy Partsch  
 Business Development  
 (949) 370-5799, Cell

[www.summitenvcon.com](http://www.summitenvcon.com)  
 33161 Camino Capistrano, Suite E  
 San Juan Capistrano, CA 92675  
 Office 949-542-4330  
 Fax 949-542-4331

DBE Haul  
 280 cu x 1.65 m/cu = 462 TON  
 462 x 49 = \$22,638  
 ECH DBE Commission

- LICENSED HAZARDOUS  
WASTE HAULER #2023
- EPA #CAR000173872
- US DOT #395113

P.O. BOX 41105  
BAKERSFIELD, CA 93364



- CONTRACTOR'S LICENSE  
#709231, A-HAZ
- CITY OF LOS ANGELES  
MBE #CCA-00260

(661) 832-2635  
(661) 832-3980 FAX

*Specializing in Environmental Waste Management*

8/11/16

Summit Environmental  
331261 Camino Capistrano Suite E  
San Juan Capistrano, Ca. 92675

Project: #11-237894 El Cajon, Ca to Buttonwillow, Ca

The following is a quote for 440 cubic yards (Approx 660 Tons) to be delivered to Clean Harbors Buttonwillow.

El Cajon to Buttonwillow: \$49.00 per ton (Estimated on getting Max 23+Tons per load)  
22 ton min on clean up loads  
\$85.00 Stand By after 1 hour of load time and 1 hour offload arrival.

TOTAL: \$22,638.00

Thank you for the Opportunity,

*Joe Torres Jr.*

Joe Torres Jr.  
J. Torres Co. Inc.